

The Privacy Issues Of College Bound Students (And How It Conflicts With What Parents Want to Know)

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So your child is getting ready to go off to college. You've been shopping for new clothes, bedding, a fan and a laptop. You've checked everything that you need off of your checklist, but is your checklist complete?

As the parent of a high-school graduate beginning a college career, you may not realize that your child will be leaving the nest as an adult in the eyes of the law. What comes as a surprise to many parents is that once a child reaches the age of 18, he or she is entitled to certain privacy rights under federal law. Those laws may conflict with the information you still want to know about your “baby” while he or she is away at college. Information like college grades and enrollment, as well as medical information, may no longer be available to you as the parent without the consent of your child. Are there documents your child should be signing now to give you access to that information while she is away at college?

In this month's newsletter, Jennifer Fortunato, Esq. and Gary R. Botwinick, Esq. team up to explain the privacy rights of college students and what parents can do to monitor them when they are away at school.

Keeping Track of Your Adult Child's Grades and Other Educational Records

Those report cards on the fridge with the gold stars and A's are long gone now that your child is a college student. In fact, unless your newly minted college scholar consents, as a parent, you are no longer entitled to review his or her education records or grades at all.

The Family Educational Rights and Privacy Act ("FERPA") is a Federal law that protects the privacy of student education records. FERPA gives parents certain rights with respect to their children's education records until the student reaches age 18. However, once the student reaches age 18, he or she becomes an "eligible student" and these rights transfer from the parents to the "eligible student."

Prior to the student reaching 18 years of age, the parents have the right to inspect educational records a school maintains and request corrections for inaccurate and/or misleading information. Once the student becomes an "eligible student," all of those rights shift from the parent to the student. Prior to the child reaching 18 years of age, the school must have written authorization from the parent before it can release any records. Once the student turns 18, those rights transfer to the student, often when the student enters trade school or college. As a result, all academic information regarding the student is delivered directly to the student (and not the parents), absent a specific written waiver from the student. However, there is a **very important exception** to these privacy laws if the parent can document, in writing, that the student is still claimed as a dependent for income tax purposes.

Often, parents complain that the school prevents them from directly obtaining a child's grades while the parents pay for tuition and housing. However, under Federal law, the school is not permitted to provide this information to a parent without a waiver from the student. The best way to obtain the information is to ask your child. If you pay for tuition, this should be leverage used to obtain the information you want.

Are The Rules Different When The Parents of The Student Are Divorced?

As Timothy Ford explained above, parents of children over 18 cannot obtain their child's grades or other educational records, such as proof of collegiate status, proof of enrollment and course credits, directly from the college without their child's consent. This obstacle is particularly burdensome in cases where parents are divorced.

Often a parent is required by an agreement or a Court Order to pay or contribute towards their child's college education. If the parent is the non-custodial parent, he or she is usually also paying child support. What are the rights of the parent who pays child support when the supported child and/or the other parent refuse to provide him or her with their child's grades? What about proof that their child is enrolled in college full-time with passing grades? These are important questions because grades and enrollment are usually the requirements to maintain a child's unemancipated status and entitlement to mandatory financial support.

Divorced parents, as well as intact family parents, can obtain a Court Order requiring their child's college to provide them with their child's grades and other records. FERPA does not prevent colleges from complying with this Order. However, if the child attends college out of the State of New Jersey, most out-of-state colleges will not comply with such an Order.

New Jersey case law has held that a child cannot use the FERPA as a sword to block a parent's right to verify his or her ongoing collegiate status while simultaneously asserting that he or she is unemancipated and is entitled to mandatory child support and college contribution. The New Jersey Courts have held that if a child is unwilling to provide a parent with verifying documentation (i.e. proof of collegiate status, proof of enrollment, course credits, and performance via report cards), then that child should not be entitled to assert an entitlement to ongoing mandatory child support and/or college contribution.

The Importance of a Health Care Proxy for Your College Bound Child

Once you understand your rights to educational information under FERPA, another area of concern to parents of “adults” is medical information. For the past 18 years, you’ve taken your child to all of his or her doctor visits. When your child was rushed to the hospital with a broken leg, you were right there next to her. The doctors always spoke to you and sought your approval for all medical decisions. Now your child is off to college and you won’t be there. If your child needs medical attention what role, if any, will you have?

Welcome to the world of having an adult child.

The laws today place very strict limits on the extent to which medical personnel can disclose confidential medical information, and to whom a medical professional can even speak regarding medical issues. HIPAA is the Federal law that protects the confidentiality of personal medical information. When your child turns 18 and goes off to college, without specific authorization, the school’s health care center, a hospital that might admit your child, and any physician or other medical professional will likely refuse to disclose confidential medical information to you except in the case of an emergency. So what is a parent to do?

The answer is that all college bound students should be encouraged to provide a parent, or other responsible adult, with a health care proxy. A health care proxy is a document wherein an individual over the age of 18 grants another individual the ability to make medical decisions for such individual when he or she is physically or medically incapable of making a decision on his or her own behalf. These documents should also include a broad HIPAA power naming a responsible adult as the health care agent to receive confidential medical information, especially for those young adults who have never had the experience of making medical decisions on his or her own.

Unfortunately, as all parents know, the job of parenting never ends – it just changes. While the beginning of a child’s college career is an exciting life event, it can also be filled with feelings of stress and confusion. We hope that you find this information helpful, and we welcome the opportunity to answer any other legal questions you may have about these issues.